114-15

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 1027.

JESSE J. MURPHY, APPELLANT,

vs.

ALEXANDER RAMSEY, A. S. PADDOCK, G. L. GODFREY, A. B. CARLETON, J. R. PETTIGREW, E. D. HOGE AND ARTHUR PRATT.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED OCTOBER 9, 1884.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

a Supreme Court, Utah Territory.

JESSE J. MURPHY, Appellant,
vs.
ALEXANDER RAMSEY *et al.*, Respondents.

Transcript.

Bennett, Harkness & Kirkpatrick, att'ys for appellant.
Rosborough & Merritt, Arthur Brown, and Sheeks & Rawlins, counsel for appellant.
Dickson & Varian, & Hoge & Jonasson, att'ys for respondents.

Copy served Jan'y 9th, 1884.

DICKSON & VARIAN,
Att'ys for Resp'ts

Filed January 9th, 1884.

E. T. SPRAGUE,
Clerk of Supreme Court.

1 *Complaint.*

Supreme Court, Utah Territory.

JESSE J. MURPHY, Plaintiff,
vs.
ALEXANDER RAMSEY, A. S. PADDOCK, G. L. GODFREY, A. B. Carleton, J. R. Pettigrew, E. D. Hoge, and Arthur Pratt, Defendants. } Transcript.

The plaintiff above named complains of the defendants, and on information and belief alleges, that after the 22d day of March, 1882, and prior to the first day of July, 1882, under the provisions of section 9 of an act of the Congress of the United States, approved March 22d, 1882, and entitled "An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," the President of the United States, by and with the consent of the Senate of the United States, duly appointed the defendants, Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carleton, and J. R. Pettigrew, to perform the duties mentioned in
2 said section, to be performed by a board of five persons, and by virtue of said appointment, they became a board of five persons with the powers named in said section.

And, on information and belief, the plaintiff alleges that, after such appointment, and prior to the first day of August, 1882, the last named five defendants, duly qualified as such appointees, came to Utah and organized as a board, and entered upon the exercise of the powers and the discharge of the duties granted and imposed by said section 9 of said act of Congress. That after said organization, said five defendants were commonly called "commissioners," and are hereinafter referred to and called the "Board of Commissioners."

That said Board of Commissioners afterward ordered, directed and supervised a registration of the voters of the Territory of Utah, for the general election in said Territory, to be held on the seventh day of November, 1882, for the election of a delegate for said Territory

to the Forty-eighth Congress, and for such other elections as might be held prior to another registration of voters of said Territory; and on or about the tenth day of August, 1882, the said Board of Commissioners made and published rules providing for said registration, for the appointment of registration officers and judges of election, and the canvas and return of the votes; directed said registration to be made during the week commencing on the second Monday of September, 1882, and, among other rules, wilfully and maliciously made and published the following:

"Rule 1.

"There shall be appointed one registration officer for each county, and one deputy registration officer for each precinct thereof.

"Rule II.

"Such registration officer shall, on the second Monday of September next, proceed by himself and his deputies in the manner following: The registration officer of each county shall procure
3 from the clerk of the county court the last preceeding registry list on file in his office, and shall, by himself or his deputies, require of each person whose name is on said list, or who applies to have his name placed on said list, to take and subscribe the following oath or affirmation:

'TERRITORY OF UTAH, }
County of ——— } *ss:*

'I, ——— ———, being first duly sworn (or affirmed), depose and say: That I am over twenty-one years of age, and have resided in the Territory of Utah for six months, and in the precinct of ——— one month immediately preceding the date hereof, and (if a male) am a native born or naturalized (as the case may be) citizen of the United States, and a tax payer in this Territory, (or if a female) I am native born, or naturalized, or the wife, widow or daughter (as the case may be) of a native born or naturalized citizen of the United States, and I do further solemnly swear (or affirm), that I am not a bigamist nor a polygamist; that I am not a violator of the laws of the United States prohibiting bigamy or polygamy; that I do not live or cohabit with more than one woman in the marriage relation, nor does any relation exist between me and any woman which has been entered into or continued in violation of the said laws of the United States prohibiting bigamy or polygamy, (and if a woman) that I am not the wife of a polygamist, nor have I entered into any relation with any man in violation of the laws of the United States concerning polygamy or bigamy.

"Subscribed and sworn to before me, this ——— day of ——— 1882.

——— ———,

'Registration Officer, ——— Precinct.'

"And said registration officer, or his deputies, shall add to said lists the names of all qualified voters in such precinct whose names are not on the list, upon their taking and subscribing to the

4 aforesaid oath, and the said registration officer shall strike from said lists the names of said persons who fail or refuse to take said oath, or have died or removed from the precinct, or are disqualified as voters under the act of Congress approved March 22d, A. D. 1882, entitled 'An Act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes:' *Provided*, That the action of any registration officer may be revised and reversed by this commission, upon a proper showing: *And provided, further*, That if the registration officer be unable to procure the registration list from the office of the clerk of the county, or if the same have been lost or destroyed, the said officer and his deputies shall make a new registry list in full of all legal voters of each precinct of the county, under the provisions of these rules."

That said Board of Commissioners also, by rules, provided for the appointment of and appointed three judges of election for each election precinct in said Territory.

And on information and belief, the plaintiff alleges that the defendant, E. D. Hoge, was appointed registration officer for the county of Salt Lake, in said Territory of Utah, and the defendant, Arthur Pratt, was appointed deputy registration officer for the fourth election precinct of the city of Salt Lake, in said county, and that each accepted the appointment, duly qualified, and respectively acted throughout the said registration as such registration and deputy registration officer.

And the plaintiff alleges, that on the second Monday of September, 1882, the defendant, Arthur Pratt, as deputy registration officer for said fourth precinct in the city and county of Salt Lake, aforesaid, acting under the direction of the other defendants, commenced registering the voters of said precinct and making a registration list of such voters, and continued daily therein until the evening of Saturday of the same week, when the registration was closed.

5 And the plaintiff alleges that he is a native citizen of the United States of America, and prior to the 22d day of March, 1882, was more than twenty-one years of age; that he has resided continuously in the Territory of Utah for more than eleven years, and resided continuously in the fourth precinct of Salt Lake City, in said Territory, for more than two years past; that he has, for more than ten years prior to the November election in 1882, lawfully exercised the rights and enjoyed the privileges of the election franchise in said Territory, and has, for more than ten years last past, owned taxable property and been a tax payer in said Territory, and that his name was on the last registration list of the voters of the second precinct, Ogden City, Weber county, Utah, made prior to the second Monday of September, 1882.

And the plaintiff alleges that he has not, since more than three years prior to March 22, 1882, married or entered into any marriage contract or relation with any woman, or in anywise violated the act of Congress approved July 1, 1862, defining and providing for the punishment of bigamy in the Territories, and has resided continu-

ously and openly in the counties of Weber and Salt Lake, Utah, for ten years last past, and has not violated any of the provisions of the act of Congress approved March 22d, 1882, entitled "An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes;" and that he has not, on or since the 22d day of March, 1882, cohabited with more than one woman, and has never been charged with or accused or convicted of bigamy or polygamy, or cohabiting with more than one woman, in any court or before any officer or tribunal.

And the plaintiff alleges that on the 13th day of September, 1882, he personally went before the defendant, Arthur Pratt, then acting as deputy registration officer in and for the fourth precinct in Salt Lake City, aforesaid, and signed and presented to said defendant, and offered to verify, and requested the said defendant to take and certify plaintiff's oath to the following affidavit, to wit:

6 TERRITORY OF UTAH, } *ss:*
County of Salt Lake, }

I, Jesse J. Murphy, being first duly sworn, depose and say: I am over twenty-two years of age, and have continuously resided in the Territory of Utah for more than six months, to wit, for more than eleven years last past; I have resided in the fourth precinct of Salt Lake City more than six months next preceding the date hereof, and now reside therein; I am a male native born citizen of the United States of America, and a property owner and tax-payer in said Territory of Utah. I have, under the laws of the Territory of Utah, exercised the elective franchise in said Territory for more than ten years last past. I have not, within three years prior to the 22d day of March, 1882, or since, having a wife living, married another, or another woman; and I have continuously and openly resided in the counties of Weber and Salt Lake, in the Territory of Utah, for more than three years prior to the 22d day of March, 1882, and I have not, on or since the 22d day of March, 1882, having a wife living, married another, or simultaneously, or on the same day, married more than one woman, or on or since said last named date married or entered into any marriage contract or relation with any woman, or cohabited with more than one woman, or in anywise violated the act of Congress entitled "An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," approved March 22d, 1882. My name is on the last registry list of voters of the second precinct, Ogden City, Weber county, Utah.

JESSE J. MURPHY.

Subscribed, sworn to before me, this thirteenth day of September, A. D. 1882.

And at the same time the plaintiff requested the said defendant, Arthur Pratt, to put plaintiff's name on the registry list of voters of said precinct, and to register him as a voter therein. That the said
7 defendant, Arthur Pratt, acting under the directions of the other defendants, wilfully and maliciously refused to receive

said affidavit or to swear plaintiff thereto, or to register him as a voter of said precinct, but on the contrary wilfully and maliciously struck plaintiff's name off the list of registered voters of said precinct, and left his name off the list of voters of said precinct, made at said registration.

That afterwards, before the close of said registration, and on the 14th day of September, 1882, the plaintiff presented a duplicate of said last-named affidavit to the defendant, E. D. Hoge, then acting as county registration officer for said county of Salt Lake, and informed him of the ruling and action as aforesaid of the defendant, Arthur Pratt, and requested the defendant, E. D. Hoge, to correct and reverse said ruling, and to instruct the defendant, Arthur Pratt, to swear plaintiff to said affidavit and register him as a voter, and the said defendant, E. D. Hoge, wilfully and maliciously refused to correct or change said ruling and action, and approved and affirmed the same.

That on the 16th day of September, 1882, the plaintiff presented to said Board of Commissioners a duplicate of said last-named affidavit, and informed them of the action and ruling of the defendants, Arthur Pratt and E. D. Hoge, and requested said board to reverse and correct said rulings and action, and to direct that plaintiff's oath to said affidavit be taken, and that he be registered as a voter of said precinct, and the said Board of Commissioners wilfully and maliciously refused to correct or change said rulings, and affirmed and approved the same, and said last-named ruling was made before the close of the registration in said precinct, and when there was still time for plaintiff to have registered before the close of the registration.

And, on information and belief, the plaintiff alleges that the defendants all knew that, unless the plaintiff's name appeared on the registration list then being made of the voters of said precinct, his vote would not be received at the election to be held November 7, 1882, or at any election until after another registration of voters.

That at an election held throughout the Territory of Utah,
8 on the 7th of November, 1882, for the election of a delegate for the Territory of Utah for the Forty-eighth Congress, the plaintiff went before the judges of election in said fourth precinct of the city of Salt Lake, in the county of Salt Lake, at the place where the votes in said precinct were being taken, and offered to vote at said election, and tendered and offered to take the same affidavit, but the said judges refused to receive his vote, on the ground that he was not registered as a voter in said precinct.

And, on information and belief, the plaintiff alleges that the defendants, and each of them, intending to wrongfully deprive the plaintiff of the elective franchise in said Territory, wilfully and maliciously, by the acts and in the manner aforesaid, refused the plaintiff registration as a voter, at the said registration commenced on the second Monday of September, 1882, and deprived the plaintiff of the right to vote at the election held in said Territory on the 7th day of November, 1882, and at all elections under said regis-

tration, whereby plaintiff has sustained damage to the amount of twelve hundred dollars.

Wherefore the plaintiff prays judgment against the defendants for the sum of twelve hundred dollars and costs of suit.

BENNETT, HARKNESS & KIRKPATRICK,
Attorneys for Plaintiff.
ROSBOROUGH & MERRITT,
ARTHUR BROWN,
SHEEKS & RAWLINS,
Of Counsel for Plaintiff.

(Duly verified.)
Filed June 30, 1883.

9 *Demurrer.*

(Title.)

The defendants in the above entitled action, each in his own behalf, demur to the complainant therein, on the ground that—

1. Said complaint does not state facts sufficient to constitute a cause of action.

E. T. SPRAGUE,
Defendants' Att'y.

(Duly verified and filed.)

Order on Demurrer.

(Title.)

The arguments on the demurer of the defendants herein having been heard, it is now ordered and adjudged that the demurrer of the said defendants be, and the same is hereby, sustained, and that the defendants have judgment against the plaintiff unless he amend his complaint and pay the costs of the demurrer.

And the plaintiff, by counsel, in open court, having declined to amend, and elected to abide by his complaint, judgment in favor of the defendants and against the plaintiff is ordered.

Dated Dec. 10th, 1883.

By the court:

JOHN A. HUNTER, *Judge.*

And at the same time the plaintiff, by counsel, duly excepted to the ruling and decision of the court on said demurrer, and the exception is allowed.

JOHN A. HUNTER, *Judge.*

(Filed Dec. 10, 1883.)

10 *Judgment.*

(Title.)

In this action the defendants having demurred to the plaintiff's complaint herein, and said demurrer having been argued and submitted to the court at the September term, 1883, thereof, and the court having now fully considered the same, and having sustained

said demurrer, and plaintiff, by his attorneys, Messrs. Bennett, Harkness & Kirkpatrick and others, electing to stand by his said complaint and declining to amend the same—

On motion of Dickson & Varian, of counsel for defendants, it is ordered, adjudged and decreed by the court that plaintiff take nothing by his said suit, and that the complaint therein be dismissed.

And it is further adjudged and decreed that said defendants recover of and from said plaintiff their costs on this behalf expended and taxed at the sum of $10.00

Filed Dec. 10, 1883.

Notice of Appeal.

(Title.)

To the above named defendants:

Please take notice that the plaintiff in this action appeals to the supreme court of Utah Territory from the judgment rendered in this action on the 10th day of December, 1883, in favor of the defendants and against the plaintiff, and from the whole of said judgment.

Dated December 14th, 1883.

BENNETT, HARKNESS & KIRKPATRICK,
Att'ys for Plaintiffs.

(Endorsed:) Service of a copy admitted, Dec. 14th, 1883.

DICKSON & VARIAN,
Def'ts' Att'ys.

Filed Dec. 14, 1883.

11 *Undertaking.*

(Title.)

The above-named plaintiff having appealed to the supreme court of Utah Territory from the judgment herein rendered against him and in favor of the defendants on the 10th day of December, 1883: now, therefore, the undersigned, as sureties, do jointly and severally undertake and promise that the appellant will pay all damages and costs which may be awarded against him on the appeal.

Dated December 15th, 1883.

A. MILTON MUSSER. [SEAL.]
DAVID JAMES. [SEAL.]

TERRITORY OF UTAH, }
Salt Lake County, } *ss:*

A. Milton Musser and David James, being each duly sworn, doth each for himself depose and say: I am a resident of Salt Lake City, Utah; am one of the sureties named in the above undertaking, and I am worth the sum of four hundred dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

A. MILTON MUSSER.
DAVID JAMES.

Subscribed and sworn to before me, December 15th, 1883.
[SEAL.] E. T. SPRAGUE,
Clerk of Supreme Court.

Filed Dec. 15th, 1883.

We certify the foregoing is a full, true, and correct transcript of the record in this action.

Dated Jan'y 9, 1884.

BENNETT, HARKNESS & KIRKPATRICK,
Att'ys for Appellant.
DICKSON & VARIAN,
Att'ys for Resp'ts.

12 FRIDAY, *February 1st*, A. D. 1884.

A session of the supreme court of Utah Territory was held this day, beginning at ten o'clock a. m., pursuant to adjournment. Present and presiding, the John A. Hunter, chief justice; present, also, Hon. P. H. Emerson, associate justice, and Hon. S. P. Twiss, associate justice; the clerk, marshal, and members of the bar. The court was duly opened.

* * * * * * * *

JESSE J. MURPHY, Appellant,
vs.
ALEX. RAMSEY *et al.*, Respondents. } From 3d Dist.

This cause coming on regularly for hearing, was, by counsel of the respective parties, submitted on briefs, and by the court taken under advisement.

13 WEDNESDAY, *June 25th*, A. D. 1884.

A session of the supreme court of Utah Territory was held this day, beginning at ten o'clock a. m., pursuant to adjournment. Present and presiding, the Hon. John A. Hunter, chief justice; present, also, the Hon. Philip H. Emerson, associate justice, and the Hon. Stephen P. Twiss, associate justice; the clerk, marshal, and members of the bar. Court was duly opened.

* * * * * * * *

JESSE J. MURPHY, Appellant,
vs.
ALEXANDER RAMSEY, A. S. PADDOCK, G. L. GODFREY, A. B. Carlton, J. R. Pettigrew, E. D. Hoge, and Arthur Pratt, Respondents. } From 3d Dist.

This cause having been heretofore submitted, and the court being sufficiently advised thereon, it is now here considered, ordered, and adjudged that the judgment of the district court therein be, and the same hereby is, affirmed, and that respondents have and recover of and from appellant the sum of twenty-eight and $\frac{31}{100}$ dollars costs.

Thereupon said appellant, by his counsel, prayed the allow-
14 ance of an appeal from this judgment to the Supreme Court of the United States, and asked that the amount of a bond

to be given thereon be now fixed; and it is hereby ordered, counsel of respondents being present and not objecting, that said appeal be and is allowed, and the penal sum of bond to be given thereon
15 be and is fixed at $250.00.

Assignments of Error.

JESSE J. MURPHY, Appellant,
vs.
ALEXANDER RAMSEY, A. S. PADDOCK, G. L. GODFREY, A. B. CARLTON, J. R. Pettigrew, E. D. Hoge, and Arthur Pratt, Appellees.

The appellant having appealed to the Supreme Court of the United States, assigns errors on the record herein as follows:

1. The court erred in affirming the judgment of the district court rendered on demurrer to the complaint, and thereby holding the complaint did not state a cause of action, and in not holding the complaint did state a cause of action, and reversing the judgment of the district court.

2. The ruling on the demurrer and the judgment of the district court thereon, and the judgment of the supreme court of Utah, necessarily affirm the complaint does not state a cause of action; whereas the said complaint does state all the facts necessary to a complete cause of action.

It shows that at the time of the registration of voters in September, 1882, the plaintiff, Jesse J. Murphy, was a qualified voter, and had the right to register as such, and to vote at the November
16 election of the same year; that his name was on the prior registration list, and should, by law, have remained there, unless removed after challenge and a hearing, as provided by law;

That he offered the proofs required by law (if any proofs were required) to have his name put on, or remain on, the registration list of his precinct.

That he was a legal voter, and had the right to vote at the November election in 1882.

That he was deprived of his lawful right to register, and also to vote, by the illegal acts of the defendants, as follows:

In erasing his name from the registration list at a time when they had no jurisdiction or lawful right to do so.

In refusing to leave his name on the registration list, or to put his name on said list, when he offered all the proofs and did all the acts required by law for that purpose.

In usurping legislative powers by prescribing a registration oath unauthorized by law, and refusing to register the plaintiff unless he would subscribe and take said oath.

17 In requiring said plaintiff, as a requisite to registration, to subscribe and take an unauthorized oath, which gave an *ex post facto* interpretation to a penal act, and which in its terms consisted largely of legal conclusions, and was so ambiguous as to be unintelligible.

The judgment herein having been rendered without any opinion, a more specific assignment of errors cannot be made.

F. S. RICHARDS &
C. W. BENNETT,
Counsel for Appellants.

Filed June 30, 1884.
E. T. SPRAGUE, *Clerk.*

18 The United States of America to Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carleton, J. R. Pettigrew, E. D. Hoge, and Arthur Pratt, Greeting:

You are cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, District of Columbia, on the 2d Monday of October next, pursuant to an appeal allowed by the supreme court of the Territory of Utah on the 25th day of June, 1884, and duly entered on the records of said court, wherein Jesse J. Murphy is appellant and you are the appellees, to show cause, if any there be, why the judgment rendered in said action by the supreme court of the Territory of Utah, on the 25th day of June, 1884, against the said appellant, should not be reversed and the errors therein corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. John A. Hunter, chief justice of the supreme court of Utah Territory, this 28th day of June, A. D. 1884.

JOHN A. HUNTER,
Chief Justice.

19 A copy of the within citation was personally served on us, and the original exhibited, this 30th day of June, 1884, and due service is admitted.

DICKSON & VARIAN,
Att'ys for Appellees.

[Endorsed:] Jesse J. Murphy *vs.* Alexander Ramsey *et al.*, appellees. Citation and admission of service. Filed June 30, 1884. E. T. Sprague, clerk.

20 Know all men by these presents, that we, Joseph Horne and Jesse W. Fox, both of Salt Lake City, in the county of Salt Lake and Territory, are held and firmly bound, jointly and severally, unto Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carlton, J. R. Pettigrew, E. D. Hoge, and Arthur Pratt in the full and just sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carlton, J. R. Pettigrew, E. D. Hoge, and Arthur Pratt, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this twenty-eighth day of June, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas lately, at a term of the supreme court of the Territory of Utah, held at the city of Salt Lake, in the county of Salt
21 Lake and Territory of Utah, in a suit depending in said court on appeal from the district court of the third judicial district of said Territory, between Jesse J. Murphy, as plaintiff and appellant, and the said Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carlton, J. R. Pettigrew, E. D. Hoge, and Arthur Pratt, as defendants and respondents, judgment was rendered against the said Jesse J. Murphy, and in favor of said respondents, in said court, at said term, and on the twenty-fifth day of June, 1884, in substance affirming the judgment of said district court, with costs, and the said Jesse J. Murphy having on the same day, in said supreme court of said Territory, prayed the allowance of an appeal to the Supreme Court of the United States, and the said appeal having been allowed, and said court having fixed the amount of a bond to be given for damages and costs at the sum of two hundred and fifty dollars:

Now, the condition of the above obligation is such, that if the said Jesse J. Murphy shall prosecute his appeal to effect, and
22 answer all damages and costs if he shall fail to make his plea and appeal good, then the above obligation to be void; else to remain in full force and effect.

JOSEPH HORNE. [SEAL.]
JESSE W. FOX. [SEAL.]

Sealed and delivered in the presence of—
ANGUS M. CANNON.
WILLIAM W. TAYLOR.

Approved by me, this 28th day of June, A. D. 1884.
JOHN A. HUNTER,
Chief Justice Supreme Court Utah Territory.

[Endorsed:] Jesse J. Murphy *vs.* Alexander Ramsey *et al.* Supersedeas bond. Filed June 30, 1884. E. T. Sprague, clerk.

23 TERRITORY OF UTAH, } *ss:*
County of Salt Lake, }

I, E. T. Sprague, clerk of the supreme court of said Territory of Utah, in pursuance of a certain appeal allowed by said court, do return hereto attached a transcript of the record and proceedings, assignment of errors, and of the bond on appeal, with a citation and proof of service thereof, all in and of said court in a certain cause in said citation described, to the Supreme Court of the United States, and I hereby certify that said transcript of the record and proceedings, assignment of errors, and said bond, so attached, is a true, full, correct, and complete copy of the several originals thereof on file or of record in my office.